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COMMITTEE AGAINST TORTURE

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Held at the Palais Wilson, Geneva,
on Monday, 19 November 2001, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Zambia (CAT/C/47/Add.2)

1. At the invitation of the Chairman, the Zambian delegation took places at the Committee table.

2. Mr. MUTALE (Zambia), updating the Committee on relevant developments in Zambia since the submission of the report, said that his Government had withdrawn its reservation to article 20 of the Convention. The delay in submitting the country's initial report to the Committee had been due to budgetary and institutional constraints which had been overcome with the aid of Swedish technical assistance. The reporting process, which had brought together key stakeholders involved in the implementation of human rights standards in Zambia, had been an eye-opener for the Government and civil society because it had revealed manifold institutional inadequacies which the authorities were now attempting to address.

3. As indicated in the report, the incorporation into domestic law of international instruments to which Zambia was a party could only be effected by passing regulations under existing legislation or adopting a whole new piece of legislation. It had not been possible to incorporate the Convention against Torture into Zambian legislation owing to inadequate financial and technical resources for the commissioning of an in-depth study to assess the extent to which the standards embodied in the Convention were consistent with existing legislation. Nevertheless, the United Nations country team in Zambia had agreed to prioritize the incorporation of international human rights instruments in domestic legislation under the United Nations Development Assistance Framework (UNDAF) for Zambia during the period 2002-2006.

4. In 1994 the Government had adopted a Police Reform Programme with a view to safeguarding individual human rights and fundamental freedoms and changing law enforcement methods in order to facilitate good democratic governance. The Reform Programme had subsequently been put into operation through the five-year Strategic Development Plan which provided, among other things, for a revision of the Zambia Police Act. The result had been the Zambia Police (Amendment) Act (No. 14 of 1999), which outlined measures to protect and monitor persons in police custody. Under the amended Act a custody officer had been assigned to every police station. The function of those officers was to assume responsibility for every person detained at the station during their shift. Police command had organized special seminars to explain the duties of the custody officer. In addition, the Government had allocated resources from the 2002 police budget to make the Police Public Complaints Authority operational. Other legislation had been passed to empower the courts to sentence offenders to community service for petty crimes, thereby dispensing with imprisonment.

5. Plans had been made to repeal and replace the outdated 1965 Prisons Act to take account of Zambia's international obligations under the United Nations Standard Minimum Rules for the Treatment of Prisoners. The new Prisons Act would provide for corrective training centres for

youth; parole for convicts about to complete their sentence and extension services and compulsory care orders. It also authorized the Minister of Home Affairs to release terminally ill convicts on medical advice and created a prison medical service. Likewise, plans had been made to repeal and replace the 1970 Refugees (Control) Act in order to provide for better administration and control of refugees and implement various international conventions pertaining to refugees.

6. The United Nations Children's Fund (UNICEF) was currently assisting the Zambian authorities with a scheme to improve the treatment of juveniles who came into contact with the criminal justice system. The scheme aimed to ensure that all arrested children were assessed promptly and that the most appropriate decision was made regarding their detention, prosecution, or release. Imprisonment was considered to be a last resort. Relatives were to be promptly informed of a child's arrest and a probation officer was required to evaluate the arrested juvenile's personal circumstances in every case.

7. Many of the complaints made against the police related to heavy-handed interrogation methods. Accordingly, the Government had rehabilitated and computerized the police forensic laboratory with a view to improving information-gathering through scientific means. The disciplinary code of police conduct had been reviewed to penalize officers found guilty of criminal or disciplinary offences. Police officers charged with criminal offences or serious offences against discipline were suspended from duty pending investigation of the case. Officers charged with such offences appeared before a police tribunal which had the power to dismiss an officer if necessary. The Government had also introduced community-oriented policing methods to encourage partnership with local communities in the fight against crime and other social ills. To that end, the Zambia Police (Amendment) Act provided for the establishment of community crime prevention associations, which acted as a check on police excesses.

8. A major project to rehabilitate and repair police stations and cells had been initiated with a view to ensuring that police officers treated suspects in a humane manner. The Government had also launched an ambitious human rights training programme for the Police Service: a total of 600 officers had undergone training since 1999. A number of non-governmental organizations (NGOs) had also organized training workshops on the role of the police in a democracy. The entry qualification for police recruits had been raised.

9. The Strategic Development Plan for the police during the period 2001-2006 sought to ensure that high-quality service was provided through equal and fair application of the law. It also advocated development of partnerships with the community, respect for individual human rights that took the community's expectations and obligations into account, and good governance.

10. In the Prisons Service, considerable efforts had been made to improve cooking facilities, provide prisoners with uniforms, release terminally ill prisoners and generally decongest prisons by establishing 33 open-air penitentiaries. Money had also been earmarked for the construction of dormitories and prison clinics.

11. Zambia's Anti-Corruption Commission had developed an investigations management policy which stipulated that interrogations should be referred to as "interviews" in a bid to make the experience more humane and limited the number of interviewers to two. Prosecutions were gradually being removed from the remit of the police and entrusted to civilian prosecutors.

12. Mr. MAVROMMATIS, Country Rapporteur, said that the report clearly demonstrated the Zambian Government's political will to proceed in accordance with the Committee's recommendations and guidelines. The report was candid and frank, and the fact that it failed to conform fully to the Committee's guidelines was simply a minor quibble. It was not surprising that the reporting procedure should have revealed a number of inconsistencies between Zambian law and the provisions of the Convention, as no comparative study had ever been carried out prior to ratification of the Convention. It was gratifying to note that NGOs had been invited to help draft the report, but it should not be forgotten that the actual drafting was the responsibility of the State party alone.

13. Reading the report, it was easy to see how extreme poverty could be used as an explanation - although never a justification - for torture. Poverty bred crime, which in turn led to demands for effective measures, which meant that the police resorted to unlawful practices. It should be noted that there was no provision for "cruelty" or "cruel treatment" in Zambian law.

14. It was surprising that Zambia had ratified the International Covenant on Civil and Political Rights, article 7 of which prohibited torture or cruel, inhuman or degrading treatment or punishment, and the Optional Protocol thereto, by which it recognized the Human Rights Committee's competence to consider communications thereunder, yet had entered a reservation to article 22 of the Convention against Torture. In the light of that blatant inconsistency, the Zambian Government might wish to reconsider its position. Another general point was that preparatory work to incorporate the Convention's provisions into domestic law should have been undertaken, or at least budgeted for, prior to ratification. There was no point in having an international obligation if the necessary domestic underpinnings did not exist.

15. It would be useful to know what steps had been taken to ensure the genuine independence of the various commissions and authorities established under recent legislation, and what mechanisms were in place to guarantee the effectiveness of their work. Given that three years had passed since the failed coup d'état, it was surprising that none of the alleged cases of torture and human rights abuses which had followed it had yet come to court. The delegation should supply more details about the methods used to guarantee the independence of the judiciary, and indicate whether there were any legal aid schemes in Zambia. The meaning of article 15 of the Zambian Constitution, cited in paragraph 8 of the report, required some clarification: what exactly was "other like treatment"? It would surely have been safer to follow the text of international instruments, which were backed up by ample case law. And serious thought should be given to adopting the definition of torture contained in the Convention which would also supply the basic material for the adoption of a law criminalizing torture.

16. The procedure of a "trial within a trial", referred to in paragraph 123 of the report and elsewhere, was not an effective method of discovering whether torture had occurred or whether there were sufficient grounds to bring a prosecution. The outcome of a "trial within a trial" was

not an indictment and could never eliminate the need for a proper investigation into each allegation of torture. Again, the Zambian authorities would do well to re-evaluate their procedures.

17. He asked if the State party was aware that article 2 of the Convention also referred to measures to prevent torture in addition to legislative, administrative and judicial measures, such as legal aid schemes that had a deterrent effect, since they allowed torture victims to file private criminal prosecutions. He wondered whether the State party envisaged introducing such measures.

18. Although the report stated that no exceptional circumstances could be invoked to justify torture, it also stated that it was an offence to disobey an army officer's orders. If that law was invoked in the case of torture, it would infringe article 2, paragraph 3, of the Convention, which stated that, "An order from a superior officer or a public authority may not be invoked as a justification of torture."

19. Referring to the definition of torture cited in paragraph 28 of the report, he asked for clarification of the term "sjamboked". That definition could not be used as jurisprudence, as it simply described an act of torture. The definition of torture that must be used was that given in article 1 of the Convention.

20. Paragraph 38 of the report stated that the Human Rights Commission in Zambia was active only at the national level. That appeared to be contradicted by paragraph 45 (c), which referred to the Commission's mandate at provincial and district levels. The State party should clarify the exact scope of the Human Rights Commission's powers. He also wished to know who would appoint the members of the Police Public Complaints Authority (para. 42) and how its independence would be guaranteed and its recommendations implemented.

21. Turning to article 3, which referred to expulsion, return and extradition, he emphasized that it was not sufficient to invoke the 1951 Convention relating to the Status of Refugees. Unlike that Convention, article 3 of the Convention against Torture provided that no person, including a refugee, could be expelled or extradited to a country where there were substantial grounds for believing that he would be in danger of being subjected to torture. If the State party agreed to recognize the competence of the Committee against Torture under article 22, it would have access to the Committee's jurisprudence that would assist it in determining what constituted a violation of article 3. The State party should include provisions in its legislation for the examination of claims against refoulement and the submission of appeals.

22. The main task facing the State party, then, was to define torture as a specific offence under its Criminal Code, and he hoped that that would be done before the next periodic report was submitted. The State party was obliged to take that step in order to comply with the Convention and because its existing criminal legislation on assault or aggravated assault was not sufficient to cover torture. In the meantime, however, the State party should make use of existing legislation to prosecute offences that represented torture. That would prevent perpetrators of torture from being released merely because the law was incomplete and do away with the anomaly referred to in paragraph 63 of the report, whereby cases of torture committed or attempted aboard a ship or aircraft registered in Zambia could not be prosecuted.

23. Another shortcoming lay in article 28, paragraph 1, of the Zambian Constitution, concerning petitions to the High Court in cases of torture (para. 6). That provision was inadequate; cases of torture required prosecution proceedings that had a deterrent effect. He wondered whether the damages awarded to victims of torture, also mentioned in paragraph 64, could be awarded against the Government or only against individuals.

24. One of the aims of article 5 of the Convention was to ensure that no person responsible for torture, either directly or indirectly, through orders or instructions, should find refuge in any country. If extradition did not exist under Zambian law, those accused of torture should be prosecuted in Zambia. Again, it was urgent for the State party to review domestic legislation, including the Extradition Act, and ensure that it was in compliance with articles 4 to 7 of the Convention.

25. Article 9 of the Convention referred to the obligation of States parties to provide mutual judicial assistance in cases involving torture. He asked whether the State party had been requested to provide such assistance and, if it had, what its response had been.

26. To illustrate his concern about the situation in Zambia, he cited a number of incidents that had been reported by such NGOs as Amnesty International and the World Organization Against Torture. They included the killing of eight suspects who had been arrested following the murder of Ronald Penza in 1998 and the detention and alleged torture of Dean Mung'omba and others following a failed coup attempt in the same year. He also raised the case of alleged police brutality during the 1997 street vendors' riots and the case of a schoolgirl who had been sent to a police station for cheating on a school examination and who had died during detention. He asked the State party to provide further information on all those cases and on serious allegations of maltreatment of street children by the police. While the country was admittedly facing severe social problems, there could be no justification for torture and inhuman treatment. He noted also that tribal laws had encouraged practices that were demeaning to women and infringed their right to equality with men. He asked the State party to explain if such practices continued.

27. He concluded by expressing his appreciation to the State party for its readiness to engage in a dialogue and to introduce the required improvements in its legislation.

28. Mr. RASMUSSEN, Alternate Country Rapporteur, said that there was no need to look further than paragraph 97 of the report to find out why the torture of suspects by law enforcement officers was widespread in Zambia: the officers knew that evidence they extracted through torture would be admissible in court and that they would not be punished for obtaining it in that way, as torture was not a criminal offence under Zambian law. However, the Government's acknowledgement of the gaps in Zambian legislation was a promising step in the right direction.

29. Turning to article 10 of the Convention, he welcomed the improvements announced by the head of the Zambian delegation with regard to the education of law enforcement personnel, although there was still much room for improvement in that area. With regard to article 11, he urged the Government to introduce systematic reviews of interrogation rules, methods and practices and of the arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment. The suggestion in paragraph 16 of the report that systematic reviews

were not carried out because of a lack of financial resources was unconvincing, as such reviews were not expensive. Moreover, it was not clear from the report whether a person who had been arrested had ready access to a lawyer and doctor and was able to contact relatives.

30. With regard to article 12 of the Convention, he said that the fact that it was so difficult to prosecute police officers accused of inflicting torture or other inhuman or degrading treatment on suspects was a major problem and meant that a prompt and impartial investigation was not possible. He assumed that the "reasonable time" within which a detained person must be brought before a court of law or released (para. 82) was the 24 hours applicable to persons arrested without a warrant (para. 84). He wished to know if the emergency powers mentioned in paragraph 89 of the report had been invoked recently. Noting that junior officers had no choice but to obey orders and that a victim of torture could sue the Attorney-General for damages, he wondered if that meant that a police officer who tortured a suspect could not be prosecuted, whereas the Attorney-General, as principal legal adviser to the Government, could be held responsible for the officer's acts.

31. With regard to the right of an individual to lodge a complaint, under article 13 of the Convention, he welcomed the fact that the Police Public Complaints Authority could investigate complaints against the police. He would like to know how many such complaints had been received by the Authority and what the outcome of those complaints had been. He would also appreciate information on the investigations conducted by the Criminal Investigations Department into alleged acts of torture and the number of complaints handled by the Human Rights Commission, as well as on any action taken on the basis of the Commission's recommendations. It would be interesting to hear the findings of the Commission's March 1998 report on its investigation into allegations of torture and human rights violations by persons suspected of involvement in the failed coup of October 1997 and by members of the police and security forces. He was puzzled by the statement that most people could not afford to bring their cases before the courts (para. 139): surely torture victims were not expected to pay for a lawyer to take their case to court and complaints to the Police Public Complaints Authority could be made free of charge.

32. With regard to article 14, he welcomed the fact that anyone who felt their rights had been violated could apply to the High Court for redress, and he wished to know how many torture victims had taken advantage of that provision. He noted that the Human Rights Commission was mandated to establish a continuing programme of research, education, information and rehabilitation for victims of human rights abuses, and he requested details on the current status and achievements of that programme.

33. He sought clarification on the apparent discrepancy between theory and practice in relation to the inadmissibility in proceedings of statements extracted by torture: whereas there was no legislation to prevent such statements from being invoked in court, (para. 146) the courts appeared to have discretion to rule any confession inadmissible if it would render the trial unfair to the accused (para. 140), and the courts had also rejected confessions obtained by means of torture (para. 72). He wondered whether the Government had any plans to bring Zambian legislation into line with article 15 of the Convention.

34. Turning to article 16 of the Convention, he welcomed the visits by the Human Rights Commission to inspect conditions in prisons and other places of detention, but was worried by the fact that the Prisons Act stipulated that no subordinate officer could punish a prisoner "unless lawfully ordered to do so", which he took to be a reference to flogging. Corporal punishment - regardless of whether the cane was three feet or four feet long, as specified in rule 173 of Zambia's Prisons Act - was a clear violation of article 16 of the Convention. Noting that article 15 of the Zambian Constitution unambiguously prohibited torture and other inhuman or degrading punishment or treatment, he asked if the Government was considering abolishing corporal punishment.

35. He noted that there were serious problems with prison overcrowding, as the inmate population of many of the prison facilities referred to in the annexes was twice as high as normal capacity. He sought clarification on what was meant by the reference to open-air prisons and was pleased that Zambia was considering the release of terminally ill prisoners.

36. Mr. CAMARA, commending the delegation for its excellent report and introduction, stressed the positive role played by Zambian judges. He was impressed by past court decisions, which had closed a gap in the law, thereby helping to ensure the primacy of the rule of law in Zambia.

37. Zambia's initial report had referred to the country's difficulties in meeting its international commitments owing to its dualistic legal regime (para. 8). He pointed out that the distinction between dualistic and monistic legal systems was becoming obsolete. Moreover, under article 27 of the Vienna Convention on the Law of Treaties, a country could not invoke provisions of its internal law as justification for its failure to perform a treaty. Even if Zambia had not formally acceded to the Vienna Convention, that was a rule of international law which was dictated by common sense.

38. Ms. GAER commended the delegation for its thorough and candid report, which acknowledged that the Convention was not being implemented in a number of areas. According to paragraph 106, for example, prison conditions were so bad as to be said to constitute inhuman and degrading treatment. Thus, the Government conceded the nature of the problem.

39. She agreed with Mr. Rasmussen that the practice of caning referred to in paragraph 160 constituted a violation of article 16 of the Convention. The Committee would welcome any measures to eliminate that practice.

40. The report provided considerable information about laws designed to protect the rights of women prisoners. She wondered whether those provisions were actually monitored and, if so, how a person could complain of a violation. According to paragraph 165, female suspects were released on bail when there was no female detaining facility. She asked whether that provision had ever been implemented.

41. As she understood it, three suspects had been arraigned in the case of Bertha Mugamazila, the schoolgirl to whom Mr Mavrommatis had referred, and the trial had begun last October. What had been the outcome?

42. Considerable information had been received from NGOs and the media alleging that female detainees were often subjected to sexual violence and degrading treatment. Women were said to be forced to parade naked in front of groups of male law enforcement officers or stripped in public; on 10 September 2001 the director of Women for Change, an NGO, had been so treated. Could the delegation explain what was done about the perpetrators of such violations and whether any victims had lodged complaints? If a violation was not reported and no punishment was imposed, it encouraged a continuation of such practices. How did Zambia intend to put a stop to them?

43. Allegations had been received from the Legal Resources Foundation that police officers routinely made sexual demands on female inmates, that rape in prison was commonplace and that such offences were never the subject of disciplinary proceedings. She asked whether any cases involving such violations had been brought to court. She also sought the delegation's comments on reports received from the World Organization against Torture alleging that rape was not taken seriously, that the limited response by the authorities even encouraged such acts, and that men infected with the human immunodeficiency virus (HIV) believed that they could cure themselves if they had sex with a virgin, thereby contributing to an increased incidence of rape in Zambia. It was also reported that perpetrators of rape were frequently punished by little more than a small fine. Often, it was alleged, such crimes were dealt with by the payment of money to the victim's family, and not even to the victim herself, thereby reinforcing the idea that rape was not a matter for the criminal justice system but a violation of family honour. Such official leniency encouraged impunity and led to further offences. She wondered what training was given to law enforcement personnel and members of the judiciary about gender-sensitive responses to such cases and whether prisons had a sufficient number of female officers. Was the creation of special units being considered to respond to cases of violence against women? Was there any way of monitoring sexual violence in prisons?

44. Amnesty International, Human Rights Watch and a number of other NGOs had questioned whether Zambia's Human Rights Commission was empowered to investigate allegations of police misconduct and had expressed concern about its independence, composition and limited resources. The Commission had established provincial branches around the country, but they apparently had no power to subpoena witnesses or documents or to consider alleged cases of torture that were before the courts. She enquired what measures were contemplated to ensure the Commission's independence, whether its recommendations to the Government had been implemented, whether its reports had been published and whether the Government intended to empower it to do more than just make recommendations.

45. Mr. YU Mengjia asked whether the Government intended to rectify the absence of a system to appeal against decisions of the National Eligibility Committee (para. 59 (a)). Paragraph 111 stated that, owing to a shortage of prison officers, it was difficult to prevent abuse of prisoners by fellow inmates. He enquired whether such cases were widespread. If so, what measures might be taken to deal with them? The same paragraph also stated that one prison officer was lost every five months because of contact with sick prisoners. That was an alarming figure, and he suggested that Zambia might wish to seek assistance from international organizations or donor countries to cope with the problem.

46. The CHAIRMAN said that the Committee was pleased to hear that Zambia had withdrawn its reservation to article 20 of the Convention.

47. Concerning article 15 and the invalidity of statements obtained through torture, he said that often the issue was not so much the confession itself as the derivative evidence. If a police officer mistreated a prisoner until he revealed where a pistol was hidden, the confession became irrelevant once the evidence - the pistol - had been found. Thus, in order to ensure full compliance with article 15, it was essential to exclude the use not only of coerced confessions but also of derivative evidence; otherwise, the police would always have a reason to brutalize suspects in serious cases and judges would conclude that they could continue to convict suspects on the basis of derivative evidence obtained with the help of a coerced confession. He urged Zambia to prohibit coerced confessions and to focus on the problem of derivative evidence.

48. The delegation of Zambia withdrew.

The meeting was suspended at 12.35 p.m. and resumed at 12.45 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

49. The CHAIRMAN drew attention to a letter dated 11 October 2001 addressed to him by the High Commissioner for Human Rights asking for the Committee's views on the extent to which the events of 11 September 2001 and the responses by States thereto might have an impact on human rights, particularly those set out in the Convention against Torture.

50. He had prepared the draft of a reply in which the Committee proposed writing to the States parties to the Convention reminding them of their obligations under articles 2 and 15 of that instrument and expressing confidence that they would comply with its provisions. One alternative might be to draft a general comment for inclusion in the Committee's annual report; another might be for the Committee, merely to inform the High Commissioner of its views and to express the hope that States parties would not violate articles 2 and 15, regardless of the responses that they were preparing. He looked forward to hearing the views of members.

The meeting rose at 12.50 p.m.